Supreme Court, U.S.
FILED

96 704 SEP 26 1996

OFFICE OF THE CLERK

(2)

APPENDIX

No. _____

The

Supreme Court of the United States
October Term, 1995

Edward H. Patterson and Barbara Morley, Husband and Wife
and American Central City, Inc., A Nebraska Corporation,
Petitioners

v.

City of Lincoln. Nebraska, A Municipal Corporation,
Respondents

On Petition for Writ of Certiorari
To The Supreme Court of Nebraska

PETITION FOR WRIT OF CERTIORARI

R. Kent Radke,
Counsel of Record
The Apothecary
Suite 150
140 North 8th St.
Lincoln, Nebraska 68508
402-476-6585

33 pp

APPENDIX A

Edward H. Patterson and Barbara Morley, husband and wife, and American Central City, Inc., Appellants, v. City of Lincoln, Nebraska, a municipal corporation, Appellee

No. S-94-697

SUPREME COURT OF NEBRASKA

250 Neb. 382

June 28, 1996, Filed

PRIOR HISTORY:

Appeal form the District Court for Lancaster County: Jeffre Cheuvront, Judge

DISPOSITION: AFFIRMED

HEADNOTES:

1. **Verdicts: Juries: Appeal and Error.** A jury verdict will not be set aside unless clearly wrong, and it is sufficient if any competent evidence is presented to the jury upon which it could find for the successful party.

2. **Verdicts: Appeal and Error.** In determining the sufficiency of the evidence to sustain a verdict in a civil case, an appellate court considers the evidence most favorably to the successful party and resolves evidential conflicts in favor of such party, who is entitled to every reasonable inference deducible from the evidence.

3. **Verdicts: Appeal and Error.** Where the evidence is conflicting, an appellate court will not ordinarily interfere with the verdict of the jury unless it is clearly wrong.

4. **Verdicts: Appeal and Error.** A civil verdict will not be set aside where evidence is in conflict or where reasonable minds

may reach different conclusions or inferences, as it is within the jury's province to decide issues of fact.

5. **Trial: Eminent Domain: Evidence.** In eminent domain proceedings where the sales prices of other tracts are offered as evidence of market value of the tract taken, a wide discretion must be granted the trial judge in determining the admissibility of the evidence of the other sales. The evidence should not be admitted where there is a marked difference in the situations of the properties.

6. **Eminent Domain: Evidence.** Whether the properties the subject of other sales are sufficiently similar to the property condemned to have some bearing on the value under consideration, and to be of any aid to the jury, must necessarily rest largely in the discretion of the trial court, which will not be interfered with unless abused. The exact limits, either of similarity or difference, or of nearness or remoteness in point of time, depend upon the location and character of the properties and the circumstances of the case.

7. **Eminent Domain: Evidence.** Generally, evidence as to the sale of comparable property is admissible as evidence of market value, provided there is adequate foundation to show the evidence is material and relevant. The foundation evidence should show the time of the sale, the similarity or dissimilarity of market conditions, the circumstances surrounding the sale, and other relevant factors affecting the market conditions at the time.

8. **Eminent Domain: Expert Witnesses.** An expert witness, when properly qualified, may testify as to the valuation of the property, and the weight and credibility of what the witness considers in coming to his conclusion is for the jury to determine.

COUNSEL: R. Kent Radke, for appellants.

William F. Austin, Lincoln City Attorney, and Dana W. Roper for appellee.

JUDGES: White, CJ, Caporale, Fahrnbruch, Lanphier, Wright, Connolly, and Gerrard, JJ

OPINION: LANPHIER

The City of Lincoln, appellee, separately condemned two pieces of land owned by appellant American Central City, Inc., a Nebraska corporation. Appellant Barbara Morley is the wife of appellant Edward H. Patterson, who is president and sole stockholder of American Central City (hereafter all appellants will be referred to as "Patterson"). The court appointed two sets of appraisers, who awarded $569,812.36 and $25,952.52 for the two pieces of land. The parties appealed, and the cases were consolidated for trial. A jury trial was held, and the jury returned a verdict in favor of Patterson in the amount of $424,270. Patterson appealed, assigning as error (1) that the verdict was not supported by the evidence, (2) that the court erred by excluding valuation determined by an "income or development cost approach" based on anticipated income from apartments Patterson expected to build on the land, and, (3) that the court erred by allowing testimony by the city's witnesses which was not the proper measures of damages. We removed the case from the Court of Appeals' docket pursuant to our power to regulate the caseloads of lower courts. We affirm.

BACKGROUND

The City of Lincoln, under eminent domain, condemned Patterson's land on the stipulated date of May 25, 1990. The land was by resolution labeled as being blighted. Patterson acquired the land over a period of 18 years. At the time of taking, the land was zoned R-6, allowing a maximum of 218 apartment units on the property, but it was not developed.

At trial, several appraisers testified as to the value of the property. All testified that the highest and best use of the land at the date of taking would be to build apartment complexes on it.

Edward Patterson testified that the fair market value of the land was $2,180,000. In an offer of proof, after the city objected, Edward Patterson stated that his opinion of value based on the income or development cost valuation would be $4,470,330. The objections before and after the offer of proof were sustained.

Patterson's first expert stated that the fair market value of the land, using the comparable sales approach, was $872,000. He used 10 sales from 1987 to 1990. Patterson's second expert also stated that the fair market value was $872,000. He used Patterson's first experts report. Neither expert was allowed, after objection, to testify as to the income or development cost valuation, that is, the value based on the income from apartments which Patterson expected to build on the land.

The city's first expert stated that the fair market value of the land, using the comparable sales approach, was $381,500. He used 21 sales from 1981 to 1990. He adjusted for the differences between the comparable properties and the condemned property and also adjusted for differences between market conditions at the time of the comparable sales and those existing at the time of the condemnation. Prior to this opinion, during a foundational examination, Patterson stated: "Your Honor, I would object to the witness giving testimony of value based on the fact he is not using the proper measures of damages." The objection was overruled. When the opinion was actually stated, Patterson raised no objection.

The city's second expert stated that the fair market value of the land, using the comparable sales approach, was $325,000. He used approximately 20 sales from various dates. He adjusted each comparable sale to minimize the differences between it and the condemned property. He explained each adjustment. He also, where he thought it appropriate, adjusted each comparable sale price to simulate the market conditions at the time of condemnation of Patterson's property. These adjustments were explained. Patterson objected to this expert's valuation opinion, stating: "Your Honor, I object. Expressing an opinion based on the fact, that's using improper measure of damages." The objection was overruled. Both of the city's experts stated that the income or development cost valuation was improper when no structure existed on the premises.

ASSIGNMENTS OF ERROR

Patterson assigns as error:

1. That the verdict of the jury is contrary to law and not supported by the evidence in that the jury failed to find that the fair market value of the land taken by condemnation at time of taking was not in excess of Four Hundred Twenty-four Thousand Two Hundred Seventy Dollars ($424,270.00).

2. That the Court erred by not allowing Appellant to present expert testimony and evidence as to the fair market value of the subject property as of the date of taking, based upon an income and development cost approach to valuation.

3. That the Court erred by allowing testimony, duly objected to by the Appellant, in so far as the expert testimony of the Defendant's witnesses, Frank Frost and Matthew J. Wilson, regarding evidence of fair market value of the subject property as of the date of the taking, in that the testimony of said expert witnesses was not the property measures of damages.

STANDARD OF REVIEW

A jury verdict will not be set aside unless clearly wrong, and it is sufficient if any competent evidence is presented to the jury upon which it could find for the successful party. *Solar Motors v. First Nat. Bank of Chadron*, 249 Neb. 758, 545 N.W.2d 714 (1996); *ConAgra, Inc. v. Bartlett Partnership*, 248 Neb. 933, 540 N.W. 2d 333 (1995); *Hoeft v. Five Points Bank*, 248 Neb. 772, 539 N.W. 2d 637 (1995).

In determining the sufficiency of the evidence to sustain a verdict in a civil case, an appellate court considers the evidence most favorably to the successful party and resolves evidential conflicts in favor of such party, who is entitled to every reasonable inference deducible from the evidence. *Solar Motors*, supra; *Roberts v. Weber & Sons*, Co., 248 Neb. 243, 533 N.W. 2d 644 (1995); *Holman v. Papio-Missouri River Nat. Resources Dist.*, 246 Neb. 787, 523 N.W. 2d 510 (1994).

Where the evidence is conflicting, an appellate court will no ordinarily interfere with the verdict of the jury unless it is clearly wrong. *Roberts*, supra; *Lincoln Branch, Inc. v. City of Lincoln*, 245 Neb. 272, 512 N.W.2d 379 (1994).

A civil verdict will not be set aside where evidence is in conflict or where reasonable minds may reach different conclusions or inferences, as it is within the jury's province to decide issues of fact. *Solar Motors*, supra; *Winslow v. Hammer*, 247 Neb. 418, 527 N.W.2d 631 (1995); Terry v. Duff, 246 Neb. 524, 519 N.W.2d 550 (1994).

ANALYSIS

The expert witnesses for both the city and Patterson used the comparable sales approach to estimate the fair market value of the condemned land. Patterson then attempted to use the income or development cost approach. This would base the value of the land on anticipated income from apartments expected to be build on the land. Patterson argues that such an approach was approved in *Iske v Metropolitan Utilities Dist.*, 183 Neb. 34, 157 N.W.2d 887 (1968).

In *Iske v. Metropolitan Utilities Dist.*, the condemned land had a gravel deposit and was subject to a lease to remove and sell the gravel. The parties stipulated that there were no comparable sales for this land. That being true, the trial court allowed the plaintiff's expert in the action to testify as to the income which would be produced form the removal of the gravel and the recreational use of the lake which the removal would create. This court affirmed the use of the "income approach" in that situation.

The case of I*ske v. Metropolitan Utilities Dist.* was followed 2 years later by the case of Iske v. Omaha Public Power Dist., 185 Neb. 774, 178 N.W.2d 633 (1970). This court allowed the use of the income approach in that case involving almost identical land. Again, the parties conceded that no comparable sales existed. The income approach determining valuation from recreational use of the land, in both of the Iske cases was possible because the value derived from the "intrinsic nature" of the land.

This case is different from both of the *Iske* cases. Here, comparable sales were not only available, but Patterson's experts relied on comparable sales for their own valuations. Further, Patterson failed to prove that the land had any intrinsic value, such as recreational use, as compared to the land in either of the Iske cases. We find the exclusion was proper.

Patterson further assigns as error failure to exclude the testimony of the city's expert using the comparable sales approach. Both sides' experts witnesses used the comparable sales valuation approach.

We have stated that in eminent domain proceedings, where the sales prices of other tracts are offered as evidence of market value of the tract taken, a wide discretion must be granted the trial judge in determining the admissibility of the evidence of the other sales. The evidence should not be admitted where there is a marked difference in the situations of the properties. *McArthur v. Papio-Missouri River NRD*, ante p. 96, 547 N.W. 2d 716 (1996); *Thacker v. State*, 193 Neb. 817, 229 N.W.2d 197 (1975). Whether the properties the subject of other sales are sufficiently similar to the property condemned to have some bearing on the value under consideration, and to be of any aid to the jury, must necessarily rest largely in the discretion of the trial court, which will not be interfered with unless abused. The exact limits, either of similarity or difference, or of nearness or remoteness in point of time, depend upon the location and character of the properties and the circumstances of the case. *Langfeld v. Department of Roads*, 213 Neb. 15, 328 N.W.2d 452 (1982).

Generally, evidence as to the sale of comparable property is admissible as evidence of market value, provided there is adequate foundation to show the evidence is material and relevant. The foundation evidence should show the time of sale, the similarity or dissimilarity of market conditions, the circumstances surrounding the sale, and other relevant factors affecting the market conditions at the time. *McArthur*, supra; *Wear v. State of Nebraska*, 215 Neb. 69, 37 N.W.2d 708 (1983).

The testimony of the city's experts met those criteria. It cannot be said that the trial court abused its discretion in allowing the city's witnesses, after satisfying foundation, to testify to comparable sales. Therefore, we find the objections to the city's experts' opinions are without merit.

Regarding whether the verdict was sustained by the evidence, an expert witness, when properly qualified, may testify as to the valuation of the property, and the weight and

credibility of what the witness considers in coming to his conclusion is for the jury to determine. *Iske v. Omaha Public Power Dist.*, supra; *Iske v. Metropolitan Utilities Dist.*, supra.

The jury verdict fell in between the two conflicting sets of expert testimony. The expert witness testimony is not binding on the triers of fact. The amount of damages sustained is peculiarly of a local nature and ordinarily is to be determined by the jury, and this court will not ordinarily interfere with the verdict if it was based upon admissible testimony. When the evidence is conflicting the verdict of the jury will not be set aside unless it is clearly wrong. *Lincoln Branch, Inc. v. City of Lincoln*, 245 Neb. 272, 512 N.W.2d 379 (1994).

We note that the jury had an opportunity to view the property.

From our review of the record, we conclude that the evidence presented a question for the jury and that it is sufficient to sustain the verdict, which is not clearly wrong.

CONCLUSION

Finding that the court did not err in excluding the income or development cost valuation and that sufficient evidence exists to support the jury's verdict, we affirm.

AFFIRMED

APPENDIX B

Analysis of E22
The 'Comparable Sales' of City Expert Witness, Mr. Frank Frost

Pursuant to the Just Compensation clause of the Fifth Amendment as applied to the states through the Fourteenth Amendment, without modern income capitalization techniques there is no way to keep up with the inventiveness of the modern bureaucrat in uncompensated separation of the citizen from his property. The senior appraiser Mr. Wilson was shown at trial to have done 199 of his last 200 appraisals for the City. Mr. Frost, the second appraiser, was represented at trial as having an independent opinion, but in fact he was shown to have presented data that were largely overlapping, adhering to the same closely woven pattern of deception, and in many areas word for word identical to Mr. Wilson's.

The analysis below shows that all of the 'comparables' were defective and of grossly inferior value. No adjustments were made for any of the defects cited here. Further, no adjustments at all from the raw sale price were made by Mr. Frost on any of his 'comparables' despite grossly incomparable conditions. His exhibit summarizing the list of 'comparables' for the jury did not contain sale dates; the dates were elicited on cross-examination. Many of the dates were incorrect and had to be corrected during cross-examination.

No adjustments from the raw sales price were made by Mr. Wilson either except on the one 'comparable' where he overlapped with Frost on Mr. Patterson's parcel acquisitions. His exhibit summarizing the list of comparables for the jury did not contain sales dates, and none had been added when the materials were submitted to the jury for their deliberation as to value.

Both appraisers ignored the fact that elevator style and concrete and steel buildings have been built fully 180° around the City Campus and Downtown area from the Union Pacific railroad bordering the campus at its northeast corner to the same rail line on the on north west. All of their lots were in locations where the appropriate construction was stick built moderate income, three story or less apartments. This Clashes with Mr. Patterson's

location on the edge of the City Campus and Downtown area immediately adjacent to a new $35,000,000+ BioTechnology Center.

Exhibits at trial showed the relation of Mr. Patterson's land to the campus and Downtown area. Mr. Patterson's properties comprised most of the remaining developable land along the 22nd Street eastern border of the University of Nebraska City Campus between 'U' on the north and 'R' on the south. The southern boundary of the campus is 'Q' and almost all academic buildings are south of 'V' (Vine) and east of 10th, with the Union Pacific main line and switch yards forming the north border of the campus. Adjacency to the campus is shown in this document, using the income techniques ruled out by the trial court, to have a value of $11,000 per unit attributable solely to the situs value of the land. Distance from the campus can be determined in almost every case from calculations on the address.

Distances in blocks to addresses listed in the exhibit are apparent simply by subtracting block numbers. Letters get bigger going north and block numbers get bigger going east. Addresses on numbered streets are referenced north and south of 'O' Street. So for example 1431 N. 9th in item #20 is seven blocks north across the rail yards from 'V' and one block west of 10th, and 5601 S. 31st in item #19 is 58 blocks south of 'Q' and 9 blocks east of 22nd.

		Price Per Unit Built or Proposed Buildable
1	1845 "K"	$4,790

Zoned 10 units, R-6. Not adjusted for economies of scale. Not adjusted for being approximately 8 blocks south of Mr. Patterson's University of Nebraska City Campus border location. Purchased by Lincoln School of Commerce for student apartments and parking. Acquired 11-21-85 but not adjusted for

the transient impact of threatened Tax Reform Act of 1986 wiping out tax shelters for outside investor income, and not adjusted for much higher interest rates than those of the recession of 1990; not adjusted for five years of 5% inflation prior to 1990. No indication of whether purchase price was discounted to date of buildability by the buyer.

$4,666

2 9th & "A" $4,666

Zoned 6 units, R-6. 6 units built. Not adjusted for economies of scale. Not adjusted for being approximately 18 blocks south of Mr. Patterson's University of Nebraska City Campus border location. Purchased for 6-plex apartments. Acquired 3-14-86 but not adjusted for the transient impact of Tax Reform Act of 1986 wiping out tax shelters for outside investor income, and not adjusted for much higher interest rates than those of the recession of 1990; not adjusted for four years of 5% inflation prior to 1990. No indication of whether purchase price was discounted to date of buildability by the buyer.

$6,000

3 1124 & "A" $6,000

Zoned 6 units, R-6. 6 units built. Not adjusted for economies of scale. Not adjusted for being approximately 18 blocks south of Mr. Patterson's University of Nebraska City Campus border location. Acquired 5-1-84 but not adjusted for much higher interest rates than those of the recession of 1990; not adjusted for six years of 5% inflation prior to 1990. No indication of whether purchase price was discounted to date of buildability by the buyer.

$4,385

4 919 & "G" $4,385

Zoned 6 units, R-6. Purchased for 6-plex apartments. Not adjusted for economies of scale. Not adjusted for being approximately 11 blocks south of Mr. Patterson's University of Nebraska City Campus border location. Acquired 4-25-85 but not adjusted for the transient impact of threatened Tax Reform Act of 1986 wiping out tax shelters for outside investor income, and not adjusted for much higher interest rates than those of the

recession of 1990; five years of 5% inflation prior to 1990. No indication of whether purchase price was discounted to date of buildability by the buyer.

		$3,985
5	945 "D"	$3,166

Zoned 30 units, R-6. Purchased for 24-plex apartments. Not adjusted for economies of scale. Not adjusted for being approximately 14 blocks south of Mr. Patterson's University of Nebraska City Campus border location. Acquired 1-28-85 but not adjusted for the transient impact of threatened Tax Reform Act of 1986 wiping out tax shelters for outside investor income, and not adjusted for much higher interest rates than those of the recession of 1990; not adjusted for five years of 5% inflation prior to 1990. No indication of whether purchase price was discounted to date of buildability by the buyer.

		$4,500
6	10th & "D"	$3,166

Zoned 51 units, R-6. Purchased for 36-plex apartments. Not adjusted for economies of scale. Not adjusted for being approximately 14 blocks south of Mr. Patterson's University of Nebraska City Campus border location. Acquired 3-11-86 but not adjusted for the transient impact of Tax Reform Act of 1986 wiping out tax shelters for outside investor income, and not adjusted for much higher interest rates than those of the recession of 1990; not adjusted for four years of 5% inflation prior to 1990. No indication of whether purchase price was discounted to date of buildability by the buyer.

		$5,833
7	1617 "F"	$3,166

Zoned 38 units, R-7. Purchased for 30-plex apartments. Not adjusted for economies of scale. Not adjusted for being approximately 12 blocks south of Mr. Patterson's University of Nebraska City Campus border location. Acquired 8-18-81 but not adjusted for much higher interest rates than those of the recession of 1990; not adjusted for nine years of average 5%

inflation prior to 1990. No indication of whether purchase price was discounted to date of buildability by the buyer.

		$3,700
8	1712 "C"	$3,700

Zoned 6 units, R-6. Purchased for 6-plex apartments. Not adjusted for economies of scale. Not adjusted for economies of scale. Not adjusted for being approximately 15 blocks south of Mr. Patterson's University of Nebraska City Campus border location. Acquired 11-83 but not adjusted for much higher interest rates than those of the recession of 1990; not adjusted for seven years of average 5% inflation prior to 1990. No indication of whether purchase price was discounted to date of buildability by the buyer.

		$3,291
9	3280 Holdredge	$2,821

Zoned 17 units (uncorrected mistake of 27 appeared on exhibit submitted to jury), R-6. Purchased for 12-plex apartments. Not adjusted for economies of scale. Not adjusted for being across Holdredge from east campus approximately one mile east and one mile north of Mr. Patterson's University of Nebraska City Campus Location. The East UNL Campus is about two miles east of the UNL City Campus, has only a small fraction of the number of students, no major university athletic events, and no proximity to the Downtown office and entertainment district. Acquired 10-3-88 but not adjusted for the transient impact of Tax Reform Act of 1986 wiping out tax shelters for outside investor income, and not adjusted for much higher interest rates than those of the recession of 1990; not adjusted for two years of average 5% inflation prior to 1990. No indication of whether purchase price was discounted to date of buildability by the buyer.

Non-Built

10 2245 S $1,833

Zoned 18 units, R-6. None built. Not adjusted for economies of scale. Not adjusted for the difference between being purchased in block wide dilapidated strip Patterson was buying before the Beadle Center was announced and the blight clearance power of full Patterson assembly development in coordination with Beadle Center. Acquired 7-88 but not adjusted for the transient impact of Tax Reform Act of 1986 wiping out tax shelters for outside investor income, and not adjusted for much higher interest rates than those of the recession of 1990; not adjusted for two years of average 5% inflation prior to 1990. No indication of whether purchase price was discounted to date of buildability by the buyer.

None-Built

11 2256 "S" $2,500

Zoned 6 units, R-6. None built. Not adjusted for economies of scale. Not adjusted for the blight clearance power of full Patterson assembly development in coordination with Beadle Center. Acquired 11-18-87 but not adjusted for the transient impact of Tax Reform Act of 1986 wiping out tax shelters for outside investor income, and not adjusted for much higher interest rates than those of the recession of 1990; not adjusted for three years of average 5% inflation prior to 1990. No indication of whether purchase price was discounted to date of buildability by the buyer.

None-Built

12 2222 "T" $2,333

Zoned 6 units, R-6. None built. Not adjusted for economies of scale. Not adjusted for the difference between being purchased in block wide dilapidated strip Patterson was buying before the Beadle Center was announced and the blight clearance power of full Patterson assembly development in coordination with Beadle Center. Acquired 4-29-88 but not adjusted for the transient impact of Tax Reform Act of 1986 wiping out tax shelters for outside investor income, and not

adjusted for much higher interest rates than those of the recession of 1990; not adjusted for two years of average 5% inflation prior to 1990. No indication of whether purchase price was discounted to date of buildability by the buyer.

		$2,291
13	SWC 23rd & "T"	$1,718

Zoned 32 units, R-6. 24 built. Not adjusted for economies of scale. Not adjusted for the difference between being purchased in block wide dilapidated strip Patterson was buying before the Beadle Center was announced and the blight clearance power of full Patterson assembly development in coordination with Beadle Center. Acquired 6-11-84 by the construction company that eventually was awarded Patterson's land by the Urban Development Department. The buyer placed the same three-story "cookie cutter" 24-plex on this parcel that he had built four times previously in the neighborhood east of this site, with little investment in the plans; not adjusted for much higher interest rates than those of the recession of 1990; not adjusted for six years of average 5% inflation prior to 1990. No indication of whether purchase price was discounted to date of buildability by the buyer.

		$1,506
14	2900 North 1st	$1,506

Zoned 60 units R-2. 60 built. Not adjusted for economies of scale. Not adjusted for being approximately 19 blocks north of 'Y' across rail yards and Cornhusker Highway, and nine blocks west of the 10th street side of the UNL City Campus, the newer eastern border of which was Patterson's location. Subject site is immediately west across North 1st from the largest trailer park in Nebraska; the trailers stretch both to the north of, and far to the south of subject property. On the east side of North 1st, forming the southern border of subject property, is another expanse of trailer houses covering many city blocks. The site bares no relationship to the Campus, or to the Downtown office and financial district. The area is completely built out with no likelihood of any change of use in the surroundings for decades. By itself the project has no hope of defining the surroundings.

Acquired 8-10-89 but not adjusted for much higher interest rates than those of the recession of 1990; Expensive site work noted by Mr. Frost. R-2 zoning limited to 35' instead of the 45' in the R-6 zoning enjoyed by the Patterson assembly, thus limiting security and views that can be offered to tenants. No indication of whether purchase price was discounted to date of buildability by the buyer.

		$884
15	1824 "M"	$430

Zoned 142 units, R-8. 69 built. Not adjusted for economies of scale. Not adjusted for being approximately 5 blocks south of Mr. Patterson's University of Nebraska City Campus border location. Acquired 5-24-90, interest rates dropping. Area where it has been common to spend $50,000 to purchase a house, then pay $6,000 to demolish (1990 dollars) it in preparation for a 'slip-in' 5 or 6-plex. On cross-examination, Mr. Frost admitted that this was a misrepresented conveyance of a partial interest in the property, the comparable was allowed to stay unmodified on the list that went to the jury. Adding insult to injury the exhibit that the jury got had $40/unit for the price per unit buildable rather than the $430/unit buildable that the misrepresented partial interest actually cost. Even if all the partial interests in the land had been totaled the sale still would in not have been representative of a 'market' in land because of the encumbrances each partial ownership represented to the other. ***The seriously out of line nature of these figures and the fact that they made it through the court system unscathed, over the vigorous objections of the condemnee, calls into question the integrity of the 'comparable' based appraisal process.*** No indication of whether purchase prices were discounted to date of buildability by the buyer.

		$1,648
16	4607 Old Cheyenne Road	$1,648

Zoned 182 units, R-3; 182 units built. Not adjusted for economies of scale. Not adjusted for being approximately 60 blocks south and two miles east of Mr. Patterson's University of Nebraska City Campus border location. Acquired 9-18-89; interest rates beginning to drop. 182 units built by non-arms length negotiated Special Permit on otherwise incompatible site,

obtained from same departments preparing the case for this condemnation. R-3 zoning limited to 35' instead of the 45' in R-6 enjoyed by Patterson assembly, limiting security and views that can be offered to tenants. No indication of whether purchase price was discounted to date of buildability by the buyer.

17&18 5011 Vine & 52nd & Vine $2,832

Zoned 406 units, R-3. 406 units built. Not adjusted for being approximately 30 blocks east of Mr. Patterson's University of Nebraska City Campus border location. Acquired 9-(12&19)-89, interest rates beginning to drop. 406 units built by non-arms length negotiated Special Permit on otherwise incompatible site, obtained from same departments preparing the case for this condemnation. R-3 zoning limited to 35' instead of 45' in R-6 enjoyed by Patterson assembly. This limits security and views that can be offered to tenants. No indication of whether purchase price was discounted to date of buildability by the buyer.

$2,000

19 5601 S. 31st $2,000

Zoned 132 units, R-2. 132 units built. Not adjusted for being approximately 58 blocks south a mile east of Mr. Patterson's University of Nebraska City Campus border location. Acquired 12-31-90, interest rates beginning to drop. 132 units built by non-arms length negotiated Special Permit on otherwise incompatible site, obtained from same departments preparing the case for this condemnation. Extensive site work noted by city appraiser, which is misleading since typically all that is being done is to bring areas up to grade for slab on grade construction, a process that Patterson's type of construction, allowed by R-6 zoning, needs very little of on a per unit basis. R-2 zoning limited to 35' instead of 45' in R-6 enjoyed by Patterson assembly. This limits security and views that can be offered to tenants. No indication of whether purchase price was discounted to date of buildability by the buyer.

20 1321-1431 N. 9th St. $4,000

Zoned 88 units, R-4. 88 units built. Not adjusted for being approximately one mile northwest of core of campus, in a run

down industrial district between the rail yards and the stench of the flood-prone Salt Creek. By itself it had no hope of defining the surroundings. Acquired 3-27-90, interest rates beginning to drop and development land near campus very scarce, so developers were willing to take anything! We indicate on the record that the buyer was an out-of-state investor who specialized in near campus developments across the United States; 88 units built by non-arms length negotiated Special Permit on otherwise incompatible site, obtained from same departments preparing the case for this condemnation. "All front-end cost paid by seller," was noted on the exhibit taken into jury room. This is an extremely misleading way of saying that the seller was required to bring the Salt Creek Flood Plain site up to the legally required 1' above the floodplain for the type of buildings possible with this zoning. There is no logical way that this expense should be subtracted from what the buyer was willing to pay for the property, the amount subtracted from price was inappropriate, the evidence should not have been submitted to the jury. The R-4 zoning limited the building height to 35' instead of 45' in R-6 enjoyed by Patterson assembly. This limits security and views that can be offered to tenants. No indication of whether purchase price was discounted to date of buildability by the buyer.

21 7101 Van Dorn $2,864

Zoned 112 units, R-3. 112 units built. Appraiser appears to have taken it upon himself to allocate 7.33 acres of a 58 acre sale to these apartments. While this may well be accurate, it is yet another process not easily checked and ripe for abuse. Not adjusted for being approximately 50 blocks east and two miles south of Mr. Patterson's University of Nebraska City Campus border location. Acquired 7-25-89, interest rates beginning to drop. 112 units built by non-arms length negotiated Special Permit on otherwise incompatible site, obtained from same departments preparing the case for this condemnation. R-3 zoning limited to 35' instead of 45' in R-6 enjoyed by Patterson assembly. This limits security and views that can be offered to tenants. No indication of whether purchase price was discounted to date of buildability by the buyer.

Analysis of E39
The 'Comparable Sales' of Mr. Matthew Wilson

1 2523 'Q' $3,333

Zoned 6 units, R-6. Approximately 3 blocks further east of UNL Campus from Mr. Patterson's land on the eastern border. Not adjusted for economies of scale. Purchased by Mrs. O'Shea as the fourth of six 50' wide lots assembled for a half city block apartment development begun in 1990. Appraiser omitted the fifth and sixth purchases done separately in 1989 at $5,500/unit and $7,300/unit respectively. Acquired 8-20-88, with impact of Tax Reform Act of 1986, during high interest rates; two years of 5% inflation prior to 1990. No indication of whether purchase price was discounted to date of buildability by the buyer.

2 2231 'S' $2,500

Zoned 4 units if holding the adjacent Patterson properties but 0 otherwise since, at only 4,610 sq. ft. area by 136' deep, the lot would only be 34' feet wide, less than the minimum buildable parcel width of 50' allowed by the zoning code, R-6. None built. Not adjusted for the fact that to a buyer other than an assembler like Patterson nothing could be done with the parcel but hold it and pay taxes on it. Note residual evidence of 'checkerboard' appraisal technique used by the City appraisers with Wilson getting the black squares and Frost the white squares in Patterson's assembly and appraising their value separately without benefit of assembly. Note that Mr. Wilson who had done 199 of his last 200 appraisals for the city seems to have been the more aggressive of the two in pursuit of the possibilities of checkered boarding since only Wilson has parcels on his list like this which are totally unbuildable when standing alone. Not adjusted for economies of scale. Not adjusted for the difference between being purchased in block wide dilapidated strip Patterson was buying before the Beadle Center was announced and the blight clearance power of full Patterson assembly development in coordination with Beadle Center. Acquired 6-28-88 but not adjusted for the transient impact of Tax Reform Act of 1986 wiping out tax shelters for

outside investor income, and not adjusted for much higher interest rates than those of the recession of 1990; not adjusted for two years of average 5% inflation prior to 1990. No indication of whether purchase price was discounted to date of buildability by the buyer.

3 2222 'T' $2,500

The same as Frost sale #12 ; see analysis above. Adding this one case of overlap to their lists prepared the two appraisers to say that they did not use a strict 'checkerboard' technique with one getting the black squares in Patterson's assembly and one the white. Note the 10% boost over the unadjusted raw sales prices that were used everywhere by Frost and everywhere by Wilson except for this one 'comparable' where they overlapped on Patterson's properties. This boost is an insignificant move toward true value but serves to ward off the charge that the two appraisers, who were represented as having given independent appraisals, in fact did not.

4 2221 'R' $2,000

Zoned 6 units, R-6. None built, but older abandoned house on the property had to either be torn down or massively reconstructed, and no adjustment was made for that. Not adjusted for economies of scale. Not adjusted for being made totally unbuildable and not accessible to assembly by the following factors: land on the east side was owned by government; the next two parcels to the left were at the time prohibitably expensive well maintained homes; being only 50' wide the five feet of fill required to get the foundation one foot above floodplain could not be adequately tapered; and the University had announced that it would someday take the whole area in condemnation for expansion over to the linear park built on the old North East Radial Right of way. This property doesn't deserve further analysis. Like almost all the others it simply needs to be excluded from any type of consideration as a comparable. Note that here again as in #2 above we see an example of Mr. Wilson appearing to have been the more aggressive of the two city appraisers in creating a case for

confiscation by including totally unbuildable 'comparables' in his list.

5 2212 'Q' $1,833

Zoned 6 units, R-6. None built, but older house on the property had to be torn down to make way for the used car lot maintenance service use that the lot was put to. Not adjusted for being made totally unbuildable and not accessible to assembly by the following factors: land on the east side was owned by the Delp used car lot operation which covered the rest of the block down to the corner 23rd and 'Q' streets; in an attempt to force acceptance for their request for rezoning compatible with used car maintenance the house immediately on the east of subject house was maintained by the Delps in a notorious state of disrepute up to and including continuous drug sales by tenants and shooting of a police officer with his own gun on the front porch; being only 50' wide the five feet of fill required to get the foundation one foot above floodplain could not be adequately tapered; This property doesn't deserve further analysis. Like almost all the others it simply needs to be excluded from any type of consideration as a comparable. Note that here again as in #'s 2 and 4 above we see an example of Mr. Wilson appearing to have been the more aggressive of the two city appraisers in creating a case for confiscation by including totally unbuildable 'comparables' in his list.

6 2119 'Q' $2,500

Zoned 6 units, R-6. None built, but tiny two bedroom house on the property with no garage and no driveway is the only single story house on the block, and was close to being demolished for disrepair when it was bought. Not adjusted for being made totally unbuildable and not accessible to assembly by the following factors: two story house on the west side was owned and occupied by upper middle income family who put substantial money into upgrading the property; the next two houses to the east are two story rental properties continuously rented to four or more students each for the years; being only 50' wide the five feet of fill required to get the foundation one foot above floodplain could not be adequately tapered; This property doesn't deserve further analysis. Like almost all the others it simply needs to be excluded from any type of consideration as a

comparable. Note that here again as in #'s 2, 4, and 5 above we see an example of Mr. Wilson appearing to have been the more aggressive of the two city appraisers in creating a case for confiscation by including totally unbuildable 'comparables' in his list.

7 2311-31 'U' $1,500

Zoned 30 units, R-6. None built; unable to get financing for apartments, the buyer did extensive self financed major repair work to reuse two old houses on the property as $700/month+ student rentals. Not adjusted for economies of scale. Parcel negatively impacted on its west end at the time by abandoned house substantially destroyed on the inside but not bad enough for the city to condemn on the outside. Not adjusted for the difference between being purchased next to block wide dilapidated strip Patterson was buying before the Beadle Center was announced and the blight clearance power of full Patterson assembly development in coordination with Beadle Center. Acquired 12-23-87 but not adjusted for the transient impact of Tax Reform Act of 1986 wiping out tax shelters for outside investor income, and not adjusted for much higher interest rates than those of the recession of 1990, so that the heirs attempting to sell the property when owner Emery Blue died had essentially no apartment development market to sell into at the time (Emery Blue, god rest his soul, was not a 'willing seller'); not adjusted for three years of average 5% inflation prior to 1990. No indication of whether purchase price was discounted to date of buildability by the buyer.

$3,137

8 53rd & R $1,951

Zoned 164 units, R-5. 102 units built. Not adjusted for being approximately 30 blocks east of Mr. Patterson's University of Nebraska City Campus border location. Acquired 11-18-87 but not adjusted for the transient impact of Tax Reform Act of 1986 wiping out tax shelters for outside investor income, and not adjusted for much higher interest rates than those of the recession of 1990; not adjusted for three years of average 5% inflation prior to 1990. R-5 zoning limited to 35' instead of 45' in

R-6 enjoyed by Patterson assembly. This limits security and views that can be offered to tenants as well as the number of units that can be put on the lot while still meeting setback and parking requirements. No indication of whether purchase price was discounted to date of buildability by the buyer. Property purchased from National Bank of Commerce Trust and Savings association, an unusual seller disposing of the property at a most inopportune time in the business cycle. While being immediately adjacent to the south end of the 406 unit Lions Gate apartment development appearing as 'special permit' comparable #'s 17 & 18 on Frosts list, Wilson represents the R-5 zoning as a normal part of the area independent of the process which lead to its acquisition by the buyer.

$2,208

9 44th & Leighton $703

Zoned 155 units, R-6. 72 units built. Not adjusted for being north across Leighton street from the crop test plots side of 'Agriculture' Campus approximately one mile east and one mile north of Mr. Patterson's University of Nebraska City Campus Location. The UNL East Campus is about two miles east of the UNL City Campus, has only a small fraction of the number of students, no major university athletic events, and no proximity to the Downtown office and entertainment district. Not adjusted for facing the loading docks and garbage dumpsters on the back side and west end of the University Place strip shoping center. Not adjusted for being across the street on the north side from a city block of single story, single rectangle, single roof ridge, unusually small two bedroom houses. Acquired 9-13-88 but not adjusted for the transient impact of Tax Reform Act of 1986 wiping out tax shelters for outside investor income, and not adjusted for much higher interest rates than those of the recession of 1990; not adjusted for two years of average 5% inflation prior to 1990. No indication of whether purchase price was discounted to date of buildability by the buyer.

		$884
10	1824 'M'	$430

Same as Frost sale #15 except that Wilson's exhibit did not understate the price per units buildable from $430 down to $40 as Frosts did; see analysis above. Note that here, where the two appraisers are not susceptible to the charge of 'checkerboarding' Patterson's properties as described in #3 above, Wilson uses the unadjusted sale price as his estimate of value just as Frost did.

11 1321-1431 N. 9th
Same as Frost sale #20; see analysis above.

12 4607 Old Cheney
Same as Frost sale #16; see analysis above.

13 5011 Vine & 14 52nd & R
Same as Frost sale #17 & 18; see analysis above.

15 2900 N. 1st
Same as Frost sale #14; see analysis above.

Summary of Error Types Cited

- **Location**

No 'comparable' listed is adjusted for location.

Mr. Hassebrook, Patterson's first licensed real estate appraiser presented at trial a study of rents in the Lincoln area and found that proximity to the University campus increased rents approximately $100/month per unit over outlying locations.

In concrete and steel buildings with professional maintenance and an adequate maintenance budget, such as was provided for in Mr. Patterson's development plan described at trial, the net present value of this income stream may be readily approximated as an inflation indexed perpetuity of moderate risk.

The discount rate normally is the sum of the *real rate + risk rate + inflation rate*. Here inflation is approximately canceled out by raises in rent, and the real rate of return on passive investments perennially hovers at or below 4%. Assigning 6% for risk is conservative where little or no additional competition could be built and Congress has already removed tax shelter. Most real estate development models in similar circumstances use risk rates lower than this. That would give a total of 10% for the discount rate. and figuring 11 months rent per year or 8% vacancy rate (again ultra conservative since vacancy is actually 1.5% in this part of Lincoln), the resulting value is ($100 x 11) / 0.10 = ***$11,000 in 'net present value'/unit inherent solely in the situs characteristic of the land.***

Adding this $11,000 situs increment to the typical price per unit value of outlying sites for moderate income apartments, approximated here as $4,000, gives ($11,000 + $4,000) = $15,000 per unit land value which is 21% of a $70,000 moderate income apartment. The reason this percentage is on the higher end of the normal range for land as a share of total development cost is the extreme pressure on demand for apartments in this built out area.

- **Economies of Scale**

The per unit bids that Mr. Patterson received for his fully architected and professionally stamped development plans presented at trial and favorably low financing fees and interest rates proffered by a large scale mortgage broker also described at trial were predicated on having 200+ units built in a single area as part of one project. The management fees and operating expense budget per unit bid by a reputable management firm similarly were based on 200+ units. Construction costs and operating expenses on a per unit basis were at least 15% lower than for comparable amenities in a 6-plex.

This trend toward increasing economy with increasing production run size which is why large complexes exist and holds true in almost every major industry in the world was nevertheless allowed to be stood on its head by the city

appraisers. They picked out a selection of 'comparables' which was purported to prove that land gets cheaper the larger the assembly. Forgetting the experience of the rest of the world in the production of goods and services, if that is true then why do so many developers go to such lengths and sacrifice to assemble land?

In precise mathematical terms what this accomplished over Patterson's objections was to reverse the order of value of Mr. Patterson's assembled land from being greater than the sum of the values of its constituent parts to being less than the sum of the partial values.

- **Blight Clearance**

The old black ghetto, for the 1% of Lincolnites who were segregated unofficially as such, was from 19th Street west to 23rd Street and from R Street north to Vine Street. The area was flooded regularly by Antelope Creek before it was put underground in 1914 and periodically thereafter until the construction of Holmes Lake Dam on Antelope Creek about five miles south of the site in the 1960's. In the mid 1960's the city planned a major federally funded four lane traffic arterial called the North East Radial through the middle third of the ghetto and acquired most of the land needed for it by the mid 1970's. Threatening condemnation but never using it and allowing their acquisitions to fall into an extreme state of disrepair, they caused advanced blight in the Radial Corridor.

Simultaneously, UNL published a major Campus 20 Year Plan in 1967 showing acquisition of the land from the existing campus east over to the Radial for use as recreation fields near the existing campus followed by a large research and development complex to be built along the Radial. Also threatening condemnation but never using it and allowing their acquisitions to fall into an extreme state of disrepair, they extended the radial blight over to the Campus.

Having bought most of the middle third of the old ghetto for the Radial, in the early 1980's the City killed the project and scheduled the land to become a park. By the late 1980's the

park was built and the long planned Beadle Center on the western third of the ghetto was in the early design stages. By the 1990 condemnation the Beadle Center was officially under development, and Patterson was approaching start of construction.

The Patterson development would have cleared away the remaining third of the old Antelope flood plain/ghetto strip. Most of the land had already been cleared in preparation for development even before the condemnation. Allowing the City to appeal to the prejudice of the jury by showing pictures of structures already removed at the time of taking was a gross distortion of the nature of the highest and best use of this land and never should have been allowed to occur.

In the case of all the slip-in lots from other areas, the false comparison that the city purposely set up was that of being stuck tightly between well maintained houses and being stuck tightly between blighted houses inhabited by ghetto dwellers. In actuality the correct comparison would have been that of being stuck tightly at near ground level between structures impacted by having a rental property with no onsite management next door vrs having the high-rise construction, long views, and open spaces allowed by Mr. Patterson's extensive assembly.

In precise mathematical terms, what this accomplished over Patterson's objections was to take the slip-in 'comparables' from being *lower bounds* on the per unit value of Mr. Patterson's property to being *upper bounds*.

It further produced as a consequence a valuation of the 'constituent parts' of Mr. Patterson's assembly as blighted ghetto lots and houses with blighting adjacent property too unsightly to allow construction of nice buildings.

The logical extension of this when put together with the reversal of 'Economies of Scale' described above and the city appraisers' denial of the impact of the passage of time, described under 'Purchase Price Not Discounted to the Time of Buildability' below is:

218 units worth of high rise land being developed within the coming year, adjacent to a newly under development multimillion dollar Biotechnology Center on the edge of a major university City Campus and Downtown office and entertainment center, entirely surrounded by new or well maintained real estate which has been proven in a court of law by the government to be worth less than the sum of the actual purchase prices of several dozen fragmented and largely unbuildable slum lots purchased over a period of eighteen years.

- **Interest Rate**

Interest on debt in large scale residential developments is so large as a percentage of total revenue that rates by themselves have the power to switch large scale residential construction on and off.

No 'comparable' listed by the expert was adjusted for the impact of interest rate cycles.

The amount offered by sophisticated investors for land purchased for such projects is what the land would be worth as part of a completed assembly on the day all factors are ripe for development less site preparation, discounted back to the purchase date using a discount rate which includes a fairly high risk component.

The interest rate which is controlled by the interaction of money markets with the open market operations of the Federal Reserve Board is normally taken down every time there is a recession in order to stimulate recovery. Developers live for these periods of low interest rates. Because the recession of the late 1970's and early 80's was accompanied by high inflation or 'stagflation,' interest rates could not be taken down as usual. This was followed during

the Reagan years by the longest period in modern history without a recession, and consequently no Fed lowering of interest rates to stimulatory levels. When the recession of 1990 arrived everyone including Mr. Patterson and the Urban Development Department (condemner) had been waiting for a decade for the one they missed in 1980.

- **Inflation.**

  Sales dated as far back as 1981 in the case of sale #7 were included in the 'comparables'. Department of Commerce data show inflation stayed close to an apparent Fed target of 5% per year.

  No 'comparable' listed by the expert was adjusted for inflation.

- **Tax Reform Act of 1986**

  The Tax Reform Act of 1986 temporarily depressed return on investment in income property, and consequently the land it is built on, by removing the shelter of income outside the project with accelerated depreciation paper losses. This was anticipated a year before the law went into effect and dampened demand for land for several years afterward by contributing to a temporary halt in construction of new apartments. The scarcity of new apartments in an area of 1.5% vacancy and increasing population in turn drove up the rents to the point where return on investment necessary for new construction was reached again in 1990.

  No 'comparable' listed was adjusted for the transient impact of the tax reform act of 1986.

- **Non Arms Length Transactions**

  Sales 16 through 21 were by non-arms length negotiated Special Permit on otherwise incompatible sites, obtained

from the same departments preparing the case for this condemnation, within a year of its occurrence.

No 'comparable' listed by the expert was adjusted for the impact of non arms length dealing.

Special permit land sales are bogus 'comparables' because the sales are not subject to free-market economic conditions.

- **Undivided Partial Interests**

Mr. Frost was forced to admit, on cross examination, that sale 15 was a ***misrepresented*** conveyance of a ***partial interest*** in the property.

No 'comparable' listed was adjusted for undivided partial interests.

As noted above this was in an area where it has been common to spend $45,000 to purchase a house, then pay $6,000 to demolish (1990 dollars) it in preparation for a 'slip-in' 6-plex, that is to spend $8,500 per unit for land with no views, and typically obnoxious surroundings, with no hope of the development itself transforming them.

- **Purchase Price Not Discounted to the Time of Buildability**

The purchaser of land for development must hold the land, waiting until conditions have arrived making the appropriate development buildable. These conditions for buildability typically include occurrence of a solid trend toward low interest rates such as in the recession of 1990, adjustment of the rental or sales market to transient conditions such as the Tax Reform Act of 1986, solidification of predicted development on the boundary such as a major university research center, and successful acquisition of related parcels, easements, special permits, etc. Having estimated the wait until conditions for buildability arrive, the would-be developer estimates what the land will be worth to her in inflated future dollars when it becomes buildable, net of

demolition and other costs. She sets a target acquisition cost at or below this, and discounts that value back to the purchase date. The estimated future target acquisition price is divided by a ***discount factor*** = (1 + discount rate)^n where n is the number of ***years wait*** required, and the discount rate is the usual sum of real rate at 4%, and inflation rate at 5%, but risk is much higher at about 11% for an approximate total of 20%.

Years Wait	Discount Factor
1	1.20
2	1.44
3	1.73
4	2.07
5	2.49
6	2.99
7	3.58
8	4.30
9	5.16
10	6.19

Reversing the perspective, one is able to look backward from a successful land assembly and development to see how astutely the buyer and seller predicted conditions for buildability. Suppose for example that assembly of six houses, on roughly equal 50' wide lots for redevelopment of a full half city block had progressed to the point of owning 3 houses by 1986, and that the developer in 1990 was actually able to develop the fully assembled block with good recessionary interest rates, purchasing the last property right before start of development at $7,000 per unit. If she predicted the future perfectly in 1986 she would have been willing to pay $7,000/2.07 = $3,381 per unit if a fourth house became available. If in 1989 she purchased the second to last house giving herself a year for acquisition of the last one, and for interest rates to develop a strong downward trend, she would have been willing to pay $7,000/1.2 = $5,833 per unit. Having only the last house to go she would now be willing to pay her full $7,000/unit target price for it

any time in 1989 after sensing that conditions were right for a recession and low interest rates in the near future.

So the 'holdout' theory of discarding progressively higher prices toward the end of an extended assembly is wrong. 'Holdouts' do occur, but usually the owner of the last house purchased has already suffered the loss consequences of holding out for a decade or more in an underutilized asset, and is looking forward to putting his capital to more productive uses. If the buyer and seller are on good terms, the seller has everything to gain and nothing to loose by selling at this figure.

The buyer's target price at the time of buildability, $7,000/unit in this example, is well above the market value of the house in the single family home market, and above the net present value of the property used as a rental. Since, under Lincoln zoning regulations, the seller's land supports 10 units if used as part of the half city block development, but only 5 if used for a 'slip-in' apartment building on a 50' wide lot, it is also far above the total compensation he would receive for use in 'slip-in' fashion.

In any event, note that tearing down a house on a 50' wide lot to build only five units puts the land cost per unit at 1/5 the price of a single family home plus demolition and sales commissions. This puts the land cost at or above the 10% to 20% of total development cost cited earlier as a reasonable rule of thumb for apartment land value in densely built out, high demand areas on the date of buildability, thereby shutting off the market.

Nor is there a 'market' the seller can turn to in the surrounding town for his house as one sixth of the land for an apartment complex on this specific half block the rest of which is not for sale.

Nor do land assemblies in general constitute a 'market' for land. So even the assembler's final target price is almost always well below the net present value of the land once conditions of buildability have been reached. So it can serve as a lower bound on value, but almost never as an accurate approximation of value.